

# Joint Legislative Task Force on Water Resource Mitigation

During the 2018 session, the Legislature passed ESSB 6091, creating a Joint Legislative Task Force on Water Resource Mitigation (Task Force) to "review the treatment of surface water and groundwater appropriations as they relate to instream flows and fish habitat, to develop and recommend a mitigation sequencing process and scoring system to address such appropriations, and to review the Washington supreme court decision in *Foster v. Department of Ecology*, 184 Wn.2d 465, 362 P.3d 9599 (2015)." The Task Force was reauthorized in 2019 (SHB 1102) and 2021 (SHB 1080).

## Task Force Membership

The Task Force must consist of the following members:

- Two members from each of the two largest caucuses of the Senate (Senators Honeyford, Salomon, Van De Wege, and Warnick);
- Two members from each of the two largest caucuses of the House of Representatives (Representatives Fitzgibbon, Maycumber, Tharinger, and Walsh);
- A representative from the Department of Ecology (Ecology);
- A representative from the Department of Fish and Wildlife (DFW); and
- A representative from the Department of Agriculture (WSDA).

Additionally, the Task Force must also include the following members, appointed by consensus of the co-chairs of the Task Force:

- One representative from an organization representing the farming industry in Washington;
- One representative from an organization representing Washington cities;
- Two representatives from an environmental advocacy organization or organizations;
- One representative from an organization representing municipal water purveyors; and
- One representative from an organization representing business interests.

Pursuant to ESSB 6091, the Task Force also has spaces for representatives of two federally recognized Indian tribes, one invited by recommendation of the Northwest Indian Fisheries Commission and one invited by recommendation of the Columbia River Intertribal Fish Commission.

## Recommendations and Voting

The Task Force was required to make recommendations to the Legislature by November 15, 2019. Recommendations must be made by a 60 percent majority of the Task Force and the representatives from Ecology, DFW, and WSDA are not eligible to vote on the recommendations. Minority recommendations that achieve the support of at least five of the named voting members of the Task Force may also be submitted to the Legislature.

These provisions were amended in SHB 1102 (2019) to provide that if a member has not been designated for a position, that position may not be counted for purposes of determining a quorum. During the period from November 16, 2019, through December 31, 2020, the work of the Task Force was limited to:

- A review of any additional information that may be developed after November 15, 2019, as a result of the pilot projects; and
- An update of the Task Force's November 15, 2019, recommendations.

The Task Force submitted a report to the Legislature in November 2019. In the report, the Task Force noted that it was unable to make recommendations that could lead to legislation at that point as the water resource mitigation projects had moved more slowly than originally anticipated.

Pursuant to SHB 1102, the Task Force expired December 31, 2020.

### **Reauthorization**

The Task Force was reauthorized through the passage of SHB 1080 in 2021. The language authorizing the Task Force remains the same with the exception of the following updates and changes:

- By November 15, 2022, the Task Force must make recommendations to the Legislature;
- By November 15, 2022, the Department of Ecology must provide the Task Force with an update on the mitigation plans based on additional information developed after November 15, 2018;
- During the period from November 16, 2019 through December 31, 2022, the work of the Task Force is limited to a review of any additional information that may be developed after November 15, 2019, as a result of the pilot projects, and an update of the Task Force's November 15, 2019, recommendations; and
- The Task Force expires December 31, 2022.

### **Pilot Projects**

Under ESSB 6091, Ecology must issue permit decisions for up to five Water Resource Mitigation Pilot Projects. These pilot projects will be used to inform the legislative task force process while also enabling the processing of water right applications that address water supply needs. Ecology provided the Task Force with information on conceptual mitigation plans for each pilot project application by November 15, 2018. By November 15, 2019, Ecology provided the Task Force with an update on the mitigation plans based on additional information developed after November 15, 2018.

The eligible pilot projects include:

- A city operating a group A water system in Kitsap county and water resource inventory area (WRIA) 15, with a population between 13,000 and 14,000 (Port Orchard);
- A city operating a group A water system in Pierce county and WRIA 10, with a population between 9,500 and 10,500 (Sumner);
- A city operating a group A water system in Thurston county and WRIA 11, with a population between 8,500 and 9,500 (Yelm);
- A nonprofit mutual water system operating a group A water system in Pierce county and WRIA 12, with between 10,500 and 11,500 service connections (Spanaway Water Company); and

- An irrigation district located in Whatcom County and WRIA 1, solely for the purpose of processing changes of water rights from surface water to groundwater, and implementing flow augmentation to benefit instream flows (Bertrand Creek Watershed Improvement District).

Ecology must issue permits in reliance upon water resource mitigation of impacts to instream flows and closed surface water bodies under the following mitigation sequence:

- Avoiding impacts by: (i) Complying with mitigation required by adopted rules that set forth minimum flows, levels, or closures; or (ii) making the water diversion or withdrawal subject to the applicable minimum flows or levels; or
- Where avoidance of impacts is not reasonably attainable, minimizing impacts by providing permanent new or existing trust water rights or through other types of replacement water supply resulting in no net annual increase in the quantity of water diverted or withdrawn from the stream or surface water body and no net detrimental impacts to fish and related aquatic resources; or
- Where avoidance and minimization are not reasonably attainable, compensating for impacts by providing net ecological benefits to fish and related aquatic resources in the water resource inventory area through in-kind or out-of-kind mitigation or a combination thereof, that improves the function and productivity of affected fish populations and related aquatic habitat. Out-of-kind mitigation may include instream or out-of-stream measures that improve or enhance existing water quality, riparian habitat, or other instream functions and values for which minimum instream flows or closures were established in that watershed.

Ecology is required to monitor the implementation of the pilot projects, including all mitigation associated with each pilot project, at least annually through December 31, 2028.